

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

RESIDENTIAL WARRANTY COMPANY, : Case No. 1:19-cv-1065  
LLC : Judge  
5300 Derry Street :  
Harrisburg, Pennsylvania 17111-3576 : Civil

and : **Jury Trial Demanded**

WESTERN PACIFIC MUTUAL :  
INSURANCE COMPANY, A RISK :  
RETENTION GROUP :  
9265 Madras Court :  
Highlands Ranch, Colorado 80130-4444 :

Plaintiffs,

vs.

POTTERHILL HOMES, LLC :  
1252 Goshen Pike :  
Milford, Ohio 45150-2261 :

**Serve Registered Agent:** :  
**KMK Service Corp.** :  
**One East Fourth Street, Suite 1400** :  
**Cincinnati, Ohio 45202** :

and :

HOLIDAY HOMES, INC., INDIVIDUALLY :  
AND T/D/B/A FREEDOM HOMES :  
1252 Goshen Pike :  
Milford, Ohio 45150-2261 :

**Serve Registered Agent:** :  
**Daniel R. Rolfes** :  
**1252 Goshen Pike** :  
**Milford, Ohio 45150** :

and :

MERIDIAN MARK MANAGEMENT, LLC :  
1252 Goshen Pike :  
Milford, Ohio 45150-2261 :

Serve Registered Agent:  
KMK Service Corp.  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202

and

ROOKWOOD BUILDERS, INC.  
4671 Northwestern Drive  
Zionsville, Indiana 46077

Serve Registered Agent:  
James F. Beckham  
7805 Maple Leaf Drive  
Cincinnati, Ohio 45243

Defendants.

### **COMPLAINT**

Plaintiffs, Residential Warranty Company, LLC and Western Pacific Mutual Insurance Company, a Risk Retention Group, file this Complaint and state as follows:

#### **Jurisdiction**

1. The Court has original jurisdiction of this matter pursuant to 28 U.S.C. §1332(a)(1).

#### **Venue**

2. Venue is placed in the Southern District of Ohio pursuant to 28 U.S.C. §1391(a).

### **PRELIMINARY STATEMENT**

#### **The Parties**

3. Plaintiff, Residential Warranty Company, LLC (“RWC”) is a limited liability corporation having its principal place of business at 5300 Derry Street, Harrisburg, Pennsylvania 17111-3576.

4. RWC is the Administrator of a ten year limited home warranty program (“Limited Warranty Program”) that is offered to buyers from builders of new homes that have been constructed by registered member/builders of the Limited Warranty Program. (Exhibit “A”, The Limited Warranty, Section V.A).

5. Plaintiff, Western Pacific Mutual Insurance Company (“WPMIC”), a Risk Retention Group, is a Colorado corporation having its principal place of business at 9265 Madras Court, Littleton, Colorado 80130-4444.

6. WPMIC is the guarantor/warrantor of the Limited Warranty Program in the event of, inter alia, a member/builder’s default of its membership/warranty obligations with respect to non-structural defects arising during the first year of coverage and otherwise with respect to designated structural elements throughout the ten-year coverage period. (Exhibit “A”, The Limited Warranty, Section I.B.1.a and b).

7. Defendant Potterhill Homes, LLC (“Potterhill Homes”) is an Ohio corporation having its principal place of business at 1252 Goshen Pike, Milford, Ohio 45150-2261.

8. At all times relevant, Potterhill Homes has been principally engaged in the business of constructing new residential homes in the State of Ohio.

9. Defendant Holiday Homes, Inc. (“Holiday Homes”) is an Ohio corporation having its principal place of business at 1252 Goshen Pike, Milford, Ohio 45150-2261.

10. At all times pertinent hereto Holiday Homes has traded and transacted business both in its individual capacity and as Freedom Homes the latter of which is registered as a fictitious name of Holiday Homes with the Secretary of State of Ohio.

11. At all times pertinent hereto Holiday Homes has been principally engaged in the business of manufactured housing in the State of Ohio.

12. Defendant Meridian Mark Management, LLC (“Meridian Mark”) is a limited liability corporation in the State of Ohio corporation having its principal place of business at 1252 Goshen Pike, Milford, Ohio 45150-2261.

13. At all times pertinent hereto Meridian Mark has remained a holding company with diverse interests including housing development.

14. Defendant Rookwood Builders, LLC (“Rookwood Builders”) is an Indiana corporation having its principal place of business at 4671 Northwestern Drive, Zionsville, Indiana 46077.

15. At all times pertinent hereto Rookwood Builders has been principally engaged in the business of constructing new residential homes in the State of Ohio.

**Registration of Potterhill Homes, LLC in the Limited Warranty Program**

16. On or about November 21, 2002 Potterhill Homes applied for and subsequently secured enrollment as a registered Member/Builder of the Limited Warranty Program.

17. Potterhill Homes enrolled and subsequently re-registered as a Member/Builder of the Limited Warranty Program. This included:

- a. Potterhill Homes executing the attached “RWC Warranty Program-Membership Agreement-State Specific” (“Membership Agreement”) and corresponding payment of an annual application fee (Exhibit “B”, Multiple Membership Application; Exhibit “C”, Membership Agreement);

- b. Holiday Homes, Inc. executing the attached Corporate Indemnification Agreement on behalf of itself and its Affiliates (Exhibit “D”, Amendment, Corporate Indemnification); and
- c. Holiday Homes, Inc. executing the attached “Amendment to WPIC Membership Agreement Corporate Listing” (Exhibit “E”, Amendment to Membership Agreement).

### **Membership Obligations of Potterhill Homes**

18. The Membership Agreement defines Potterhill Homes’ membership obligations in its capacity as a registered Member/Builder of the Limited Warranty Program and states, in pertinent part, as follows:

#### **Home Construction and Inspection**

The Member shall construct all homes in conformity with RWC's Warranty Standards, RWC approved building codes and all special industry standards recognized by RWC which are in force at the beginning of the construction of the home. **In the event that a home is not constructed in accordance with an RWC approved model building code, then Member shall have full responsibility for warranty claims arising from such noncompliance for the full ten-year period ...**

(Exhibit “C”, Membership Agreement, Section D.1.) (emphasis added).

RWC approved National Model Codes include:

(a) Building codes

(1) International Building Code (IBC)

(2) International Residential Code (IRC) ...

(e) Any building, mechanical, plumbing or electrical code that has been formally adopted by the state, city or local governing body in which the warranted home is located.

(Exhibit “C”, Membership Agreement, Section D.2.)

Member shall place all fill material in accordance with Section (K) HUD data sheet 79 G or its replacement unless more stringent requirements are called for by the

design engineer ... The foundation ... must conform with all accepted engineering practices for the area; and address specific parameters including, but not limited to, soil conditions (vegetation, fence lines, trails, tracks, slopes, and cut and fill sections), drainage, time of construction, climate conditions, and structural requirements.

(Exhibit "C", Membership Agreement, Section D.3.)

Member represents and warrants to RWC and WPMIC that it has followed the standards and procedures set forth herein and **agrees to indemnify and hold them harmless from any loss or expense, including, but not limited to, attorney and expert fees, arising from a breach of these representations and warranties.**

(Exhibit "C", Membership Agreement, Section D.5.) (emphasis added).

By enrolling a home for warranty coverage, Member warrants and certifies that it has investigated the soil conditions under and around the home and complied with the requirements of paragraph D.3.

(Exhibit "C", Membership Agreement, Section D.6.)

#### **Warranty Obligations**

If Member fails or refuses to perform its warranty obligations under the RWC Warranty Program for any reason, WPMIC will perform the Member's obligations. If WPMIC fulfills Member's obligations or if WPMIC or RWC incurs any loss, cost or expense, including, but not limited to, inspection, attorney and expert fees, by reason of Member's failure to perform hereunder or by reason of a dispute between Member and Purchaser, **Member shall upon demand, and regardless of whether Member is held liable to Purchaser, reimburse WPMIC and RWC for all expenses incurred in so performing or by reason of such failure or dispute, including, but not limited to, cost of materials, labor, architect fees, engineering fees, attorney fees, expert fees, incidental expenses including lodging, transportation and related expenses from Member and cost of collection of such reimbursement. In addition, Member shall indemnify and hold harmless WPMIC and RWC against any and all expenses, including attorneys fees incurred by them as a result of Member's failure or refusal to perform or delay in performance. In addition, Member shall pay interest to RWC or WPMIC as appropriate, at the rate of eighteen percent (18%) per annum on all sums due to RWC or WPMIC hereunder if such sums are not paid within thirty (30) days of demand by RWC or WPMIC.**

(Exhibit "C", Membership Agreement, Section E.2.)(emphasis added).

19. During Years 1 through 10 of limited warranty coverage WPMIC represented that it would perform its obligations with respect to warranted designated structural elements as set forth and defined in The Limited Warranty without a right of subrogation against its Member/Builder, if: the defect did not arise from Member's failure to construct the home in compliance with RWC Warranty Standards; and the defect did not arise from the Member's failure to adhere to Member's responsibilities hereunder. (See Exhibit "C", Membership Agreement, Sections E.3.(a) and (b).)

**Indemnification Obligations of Holiday Homes, Ltd and Affiliates**

20. The attached document entitled "Amendment, Corporate Indemnification" defines Holiday Homes, Inc. and Affiliates' indemnification obligations to RWC/WPMIC with respect to, losses, costs, and expenses which they incur as the result of, inter alia, Potterhill Homes' breach of its membership obligations and states as follows:

IN CONSIDERATION of the Warranty Company's approval of the application of membership of Potterhill Homes, Ltd. [*sic*] (hereinafter "Member") in the Limited Warranty Program and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Holiday Homes, Inc and Affiliates hereby agrees to indemnify the Warranty Company and its Insurer for and to hold the Warranty Company and its Insurer forever harmless from any and all claims, losses, and expenses, including, but not limited to, attorney fees, related in any way to Member's breach of any obligations or responsibilities it undertakes in the Limited Warranty Program, including, but not limited to, any breach of the Membership Agreement or the Member's obligation contained in any warranty issued on any of Member's homes and/or building projects.

(Exhibit "D", Amendment, Corporate Indemnification) (emphasis added).

21. The attached document entitled "Amendment to WPIC Membership Agreement Corporate Listing" similarly defines Holiday Homes, Inc. and its listed subsidiaries'/affiliates'

indemnification obligations to RWC/WPMIC with respect to, inter alia, losses, costs, and expenses relating to any subsidiary's breach of its membership obligations and states as follows:

In Consideration of RWC's approval of the application for Membership in the RWC Limited Warranty Program of Holiday Homes, Inc. (hereinafter "Builder") and its subsidiaries/affiliates listed below (hereinafter "Subsidiary"/"Affiliate") and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ***Builder hereby agrees to indemnify RWC and its insurers for and to hold RWC and its insurers forever harmless from any and all claims, losses, and expenses, including but not limited to attorney's fees, related in any way to any Subsidiary's breach of any obligations or responsibilities it undertakes in the RWC Limited Warranty Program, including but not limited to any breach of the Membership Agreement or the Subsidiary's/Affiliate's obligations contained in any warranty issued on any Subsidiary's/Affiliate's home.***

Company Name	Registration Number
Meridian Mark Management LLC	270153
Holiday Homes Inc DBA Freedom Homes	270153D
Potterhill Homes Ltd. <i>[sic]</i>	270149
Rookwood Builders LLC	270149A

(Exhibit "E", Amendment to Membership Agreement) (emphasis added).

### **COUNT ONE** **BREACH OF CONTRACT**

22. Plaintiffs incorporate by reference the allegations contained in this Complaint.
23. On November 21, 2011, RWC enrolled the home of Leisha Vance, 1830 Robley Ave., Cincinnati, Ohio 45223 in the Limited Warranty Program.
24. The Vance home was enrolled after Potterhill Homes' sale and construction of the home, Potterhill Homes' execution and submission of the attached "Application for the State Specific Warranty" to RWC, and Potterhill Homes' payment of the required warranty fee to RWC because of its requested enrollment of the home in the Limited Warranty Program. (Exhibit "F", Application for Warranty.)



25. On February 28, 2018, Ms. Vance submitted written notice to RWC of certain conditions in her home which she believed constituted warranted structural defects under The Limited Warranty. (Exhibit “G”, Notice of Defects.)

26. On March 7, 2018, Ms. Vance returned the attached “Homeowner Notice Questionnaire” to RWC verifying that she communicated with Potterhill Homes during the first two years of limited warranty coverage on her home regarding the reported condition including verbally on December 7, 2012 and February 19, 2013 and in writing on November 14, 2012. (See Exhibit “H”, Homeowner Notice Questionnaire.)

27. Potterhill Homes received notification from Ms. Vance during the first two years of limited warranty coverage for her home regarding cracks forming in her basement.

28. On March 23, 2018 and March 29, 2019, RWC completed two inspections of Ms. Vance’s home via Matthew Klein, P.E. of Criterium Cincinnati Engineers. (See Exhibit “I”, Klein Reports.)

29. Klein concluded that Ms. Vance’s home’s foundation on the east side was on unstable soil. The resulting settlement from the unstable soil resulted in multiple cracks in the foundation, bifurcation of the foundation into separate sections, notable cracks throughout the home, and racking of exterior doorways making them unusable or difficult to open. Klein expected further settlement to occur.

30. On June 8, 2018 and July 23, 2018, RWC completed two additional inspections of the subsurface of Ms. Vance’s home via Patrick A. Knoll, P.E. of Alt & Witzig Engineering, Inc. (See Exhibit “J”, Knoll Reports.)

31. Knoll concluded that the cause of settlement of the structure resulted from fill

placement by the builder at the time of construction. The placement of fill material below the home was uncontrolled and likely placed with little or no compaction effort.

32. On May 18, 2018, Ms. Vance completed an inspection of her home via Stephen E. Alexander, P.E. of CCI Engineering, Inc. (See Exhibit K”, Alexander Report.)

33. Alexander concluded that Ms. Vance’s home appeared to have been constructed on top of fill soil with additional soil added to the sloping site. The likely poor soil conditions to begin with, combined with the added weight and the close proximity of the home to the steep slope to the right of the home made the home particularly susceptible to distress from the slope movement.

34. On November 7, 2018 and November 15, 2018, National Claims Specialist Insurance, an insurer for Ms. Vance’s property, performed a finding inspection of Ms. Vance’s home via Robert L. Smith, P.E. of EFI Global. (See Exhibit “L”, Smith Report dated November 28, 2018.)

35. Smith concluded that Ms. Vance’s home contained numerous construction flaws, improper soil drainage, and poor soil preparation which all contributed to the foundation damage.

36. On April 27, 2018, RWC completed a Warranty Coverage Report declaring a portion of Ms. Vance’s claimed designated structural element defects “covered in part” under Section II.B.2. of The Limited Warranty and denying the remainder of Ms. Vance’s claims. (Exhibit “M”, Warranty Coverage Report).

37. On March 29, 2019, Criterium Cincinnati Engineers performed a second home inspection (See Exhibit “I”, Klein Reports).

38. Following the second home inspection and the discovery of additional damage and

expected repair costs, RWC concluded that the total cost of repairs for the Vance home exceeded the warranty limit of liability.

39. On April 26, 2019, RWC offered the warranty limit of liability of \$100,000 to Ms. Vance as a full and final settlement.

40. On August 1, 2019, Ms. Vance accepted RWC's settlement offer of \$100,000 as full and final settlement of her limited warranty claims. (See Exhibit "N", Release.)

41. The amount of \$100,000 represented WPMIC's maximum liability to Ms. Vance as prescribed in Section I.C.6. of The Limited Warranty and represented only a portion of estimated repair costs required to restore load bearing function to Ms. Vance's foundation. (See Exhibit "A", The Limited Warranty, Section I.C.6.)

42. On August 21, 2019, RWC submitted a written demand to Potterhill Homes' counsel for indemnification for Plaintiffs' payment of warranty limit of liability to Ms. Vance, out-of-pocket expenses and administrative expenses that Plaintiffs had incurred as the result of Potterhill Homes' improper construction of Ms. Vance's home and Ms. Vance's limited warranty claims. (See Exhibit "O", August 21, 2019 Correspondence.)

43. Defendants have failed to pay any portion of RWC's August 21, 2019 written indemnification demand within 30 days and as of the date of the filing of this Complaint are in material breach of their respective membership/indemnification obligations.

44. Plaintiffs have incurred \$110,629.17 in losses, costs, and expenses as the direct and proximate result of Potterhill Homes' material breach of the Membership Agreement including Sections D.1, D.3, D.5, D.6 and E.2, and Defendants' corresponding Indemnification Agreements.

45. Defendants' material breach includes, but is not limited to, 1) failing to construct the Vance home in conformity with the International Residential Code and applicable Building Codes for 2009 (as amended by the Residential Code of Ohio for One-, Two-, and Three-Family Dwellings), including §§401.2, 401.3, 403.1, 403.1.4, 403.1.4.1, 403.1.7 through 403.1.7.4, 405.1, 606.11, and 611.6.1, which rendered the foundation incapable of resisting forces exerted upon it; 2) failing to investigate soil conditions under and around the home prior to commencing construction thereof thereby failing to detect global instability of the soils at the site in conformity with the International Residential Code and applicable Building Codes for 2009 (as amended by the Residential Code of Ohio for One-, Two-, and Three-Family Dwellings), including §§401.4, 401.4.1, and 401.4.2; and 3) failing to control or otherwise stabilize the slope/soils behind the home in violation of HUD Data Sheet 79 G thereby causing or substantially contributing to the initial failure of the foundation.

46. Defendants remains solely, jointly, or jointly and severally liable and indebted to Plaintiffs for \$110,629.17. Further, pursuant to Membership Agreement Sections D.1, D.5, E.1, E.2, E.3.a., and E.3.b., Defendants are responsible for interest calculated at the rate of 18% per annum on all sums due to RWC and WPMIC; Plaintiffs' attorney's fees; and all other losses, costs, and expenses which RWC and WPMIC have incurred and will likely incur in the future as the direct and proximate result of Defendants' material breach of the Parties' Membership Agreement.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, Residential Warranty Company, LLC and Western Pacific Mutual Insurance Company, a Risk Retention Group, pray for Judgment in their favor and against

Defendants solely, jointly, or jointly and severally for \$110,629.17 together with costs, interest, attorney's fees, and such additional and further relief as this Court deems appropriate. Plaintiffs further demand a trial by jury on all issues.

Respectfully Submitted,

/s/ Brandon A. Woodard

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Company, LLC and Western Pacific Mutual  
Insurance Company, a Risk Retention Group*

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

/s/ Brandon A. Woodard

BRANDON A. WOODARD (0089509)